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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,133	02/26/2002	Rudolf Dietl	740123-419	5385

22204 7590 04/02/2003

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EXAMINER

PEDDER, DENNIS H

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 04/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,133

Applicant(s)

DIETL, RUDOLF

Examiner

Dennis H. Pedder

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 8-11, 14, 25-30 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12, 13, 15-24 and 31-35 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention: figures 1, 2, 3-4, three species as listed separated by commas.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 32 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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2. During a telephone conversation with Mr. Safran on March 19, 2003 a provisional election was made without traverse to prosecute the invention of figure 1, claims 1-7, 12-13, 15-24, 31-32. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-11, 14, 25-30, 36 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Claims 33-35 are examined below as readable on the elected species by the examiner.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-7, 12-13, 15-24, 31-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The numerous recitations of "adapted to be" are indefinite in that no structure or means are recited for the function. Applicant is advised that rewording the claims to delete this phrase in favor of the intended use of --for-- would be, in general, acceptable.

The phrase "at the time" is indefinite as no time has been recited and no frame of reference regarding "time" vis-à-vis the movement of the lever or carrier element, for example, is recited.

Claim 2 is vague without structure for "movably guided".

Claim 5 appears to be incorrect in "drive element (19)" for --driver (6)". Further, "positioned in a direction perpendicular" is a vague statement without structure as a point

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is a singularity without any direction. No structure for guiding this point 7 is recited. As a result, the claim is so vague that reasonable determination of the scope is not possible.

Claim 18, line 3, is vague as no application point is recited and the guide point is apparently the --second guide point-- with antecedent in claim 5.

Claim 21 lacks antecedent for "the engagement point".

Claim 22 lacks antecedent for "the guide point". See also claim 23, claims 4-5. *slit*

Claim 24 apparently requires antecedent to claim 5 and "guide point" should apparently be --second guide point--.

Claim 31 lacks antecedent to a "connecting rod" found in claim 15. *on*

Claim 34 is apparently missing wording on line 3.

Claim 35 is confusing. The guideways 8,9 have no disclosed coupling point.

As can be seen from the above listing, the claims of record require extensive modification or replacement. See further statement below in this regard.

Specification

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 2, "perpendicular".

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 1-4, 13, 32 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of Smith, three patents, Thijssen et al., or Sanders et al..

See, for example, in Smith '644, carrier element 11, drive element 13, intermediate pivot lever 12, and driver 16. In Smith, '206, see carrier element 13, 24, drive element 9, intermediate pivot lever 10', and driver 12,14, 23.

As can be seen from this multiple rejection, the claims have been drafted in an extremely broad format. See further rejections below. The claims should be redrafted to accurately reflect the disclosed invention in order to avoid extended prosecution.

As to claim 3, see guide paths 17, and that of member 24 (in "206), respectively.

As to claim 4, see guideways 7 and 5, respectively.

As to claim 32, see the various roof parts of the above references.

8. Claims 1-4, 15-17, 21-23, 32-33, 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Ingildsen et al. .

Ingildsen et al. shows carrier elements 19, 24 or 22 , drive element 30, intermediate pivot lever 22 or 36 and driver 40.

As to claim 2, as can be seen in figures 1 and 5, at one point the driver 40 moves perpendicular to drive element 30.

As to claim 3, see guide path 41.

As to claim 4, see first guide point 35 on lever 36, guided in guideway 41.

As to claim 15, see connecting rod 22, point 20.

As to claim 21, engagement point 35 is outside of the driver 40 as an arbitrary location.

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Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-4, 15-17, 21-23, 31-33, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki in view of Ingildsen et al.

Paragraph 8 above is incorporated by reference. Sasaki shows a four bar mechanism for a motor vehicle roof including bearing levers 17,18. Sasaki uses a gear arrangement for moving same. It would have been obvious to one of ordinary skill to provide in Sasaki a drive arrangement as an equivalent pivoting mechanism in the art as taught by Ingildsen et al. above in order to reduce point load wear on the gears 19 of Sasaki..

11. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki in view of Ingildsen et al. as applied to claim 33 above, and further in view of Bayer et al.

It would have been obvious to one of ordinary skill to provide in the references above a roof cassette as taught by Bayer et al. in order to store the roof protected from the elements.

Allowable Subject Matter

12. Claims 5-7, 12, 18-20, 24, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Conclusion

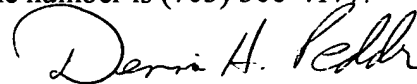
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Crawford shows another lost motion pivoting connection

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (703) 308-2178.

The examiner can normally be reached on 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (703) 308-3102. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.



Dennis H. Pedder
Primary Examiner
Art Unit 3612

3/26/03

DHP
March 26, 2003.